*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.15412 of 1999

%21-3-2006

Sri Ramakrishna Educational Society

...PETITIONER

Vs.

$ The Chairman, Nandyala Municipality, Kurnool District and another

...RESPONDENTS

! COUNSEL FOR PETITIONER: Sri E.Ayyapu Reddy,
^COUNSEL FOR RESPONDENTS: Government Pleader for GAD

<GIST

>HEAD NOTE:

? CASES REFERRED:

1. (1995) 2 SCC 577
2. (1991) 4 SCC 54
3. AIR 1999 SC 2468
4. 2001 (5) ALD 663 (DB)
5. 2001 (1) ALD 55

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.15412 OF 1999

21.3.2006

Between:

Sri Ramakrishna Educational Society

… Petitioner

AND

The Chairman, Nandyala Municipality, Kurnool District and another

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.15412 OF 1999

ORDER:

Sri Ramakrishna Educational Society filed the present writ petition seeking a direction to the respondents, namely, the Chairman, Nandyal Municipality, Kurnool District and the Government of Andhra Pradesh in Town Planning and Municipal Administration Department, to remove the temporary sheds erected in the playground for establishing Rythu Bazar (farmers bazar) and restore it as playground of Sri Ramakrishna Vidyalaya and for citizens of Nandyal Town.

The correspondent of the petitioner society filed an affidavit in support of the writ petition. The following facts and allegations may be culled out from the same. The petitioner society was formed in 1956 by one late N.Venkata Subbaiah, who is statedly an eminent freedom fighter and former Chairman of A.P.Legislative Council. He formed and established Ramakrishna Vidyalaya, which is recognized and aided by Government of Andhra Pradesh. The said educational institution is located in a colony known as Srinivasa Cooperative Housing Society Colony (the colony, for brevity), which came into existence as per the approved layout plan. It is alleged that the members of the colony society earmarked about Acs.2.00 of land adjoining the school premises as playground and since its establishment, Ramakrishna Vidyalaya has been using the said land as play ground. It is also alleged that though the playground form part of Srinivasa Colony Layout, Ramakrishna Vidyalaya was using the land and the same was also recognized by the Municipal Council on 31.08.1991 vide resolution No.226 recommending to the Government to grant lease of the land for playground on payment of Rs.1,000/- (Rupees one thousand only) per acre. The first respondent submitted layout under Section 14 of the A.P.Town Planning Act, 1920 (the Act, for brevity) to second respondent, who approved the same. Even in the master plan, the land admeasuring about Acs.2.00 was shown as playground. Notwithstanding the same, in July, 1999, respondents erected temporary sheds in the playground and converted it into a Rythu Bazar, which was inaugurated by local M.L.A., and Deputy Speaker of A.P.Legislative Assembly. Such conversion of playground into Rythu Bazar deprived about one thousand students of Ramakrishna Vidyalaya of their right to have a recreation and physical exercise, which is essential for their well being. It has also polluted the environment and deprived the students of peace of mind. The location of Rythu Bazar adjoining the school is in violation of fundamental rights of the citizens.

The respondents filed separate counters. The second respondent also filed an additional counter affidavit. The first respondent in its counter while denying the petition averments stated as follows. Srinivasa colony society submitted proposals for residential layout over an extent of Acs.40.00 of land to the Director of Town and Country Planning, Hyderabad, through the Commissioner of Nandyal Municipality. The Director approved the layout bearing T.P.No.18/77 as per the Layout Rules

providing ten per cent of total extent as reserved open space for public use in three different localities within the layout boundaries. The area admeasuring Acs.1.94 earmarked as playground, which is not intended for the students of Ramakrishna Vidyalaya alone and the same is intended for the residents of the colony as well. The school of the petitioner society is outside layout T.P.No.18/77 boundary. However, on 02.07.1991, the President of the petitioner society submitted an application for allotment of the open land in their favour on long term lease. The Municipal Council in their resolution No.226, dated 31.08.1991, resolved to submit proposals to the Government for allotment of the area admeasuring Acs.1.50 in favour of the petitioner society for a period of twenty five years on lease basis. Considering the same, the second respondent by Memo No.2398/J1/91-14, dated 12.04.1996, rejected the proposal to lease out municipal site in question in T.P.No.18/77 in favour of the petitioner society. By endorsement in L.Dis.No.3554/91/G1, dated 02.05.1996, the same was informed to the petitioner society. In view of this, the petitioner cannot claim any right over the municipal site. In 1998, the Chief Secretary to Government of Andhra Pradesh addressed a demi official letter, dated 19.12.1998, requesting the District Collector, Kurnool, to select a suitable site for establishment of Rythu Bazar for direct sale of vegetables to the consumers from farmers. As directed by the District Collector, the Revenue Divisional Officer, Nandyal selected land admeasuring Acs.1.79 in approved layout reserved open space and sent recommendation accordingly, based on which, the Government issued orders in G.O.Ms.No.201, Municipal Administration, dated 30.04.1999, to handover the site to Marketing Department to enable it to construct Rythu Bazar. The Rythu Bazar is functioning since February, 1999 and the petitioner has filed the writ petition claiming the site as its own property.

In the counter affidavit as well as additional counter affidavit, the second respondent (the counter is filed as if it is on behalf of first respondent, which is not correct) while opposing the writ petition, does not, however, dispute that the land in question was earmarked as playground in approved layout T.P.No.18/77. It is also not disputed when the master plan for Nandyal Town was approved vide G.O.Ms.No.63, dated 30.01.1990, the usage of the land was shown as playground and accordingly earmarked in the master plan. It is also alleged that there is no necessity to call for objections while converting the land earmarked as playground into Rythu Bazar. Insofar as other aspects are concerned, the averments in the counter affidavit filed by second respondent are similar to those in the counter affidavit of the first respondent and it is not necessary to sum up them.

Learned counsel for the petitioner submits that the Government approved master plan for Nandyal under Section 14 of the Town Planning Act and unless and until the procedure contemplated under Section 15 of the Act is followed, the master plan cannot be varied or modified. For over forty years, the land has been used by Ramakrishna Vidyalaya and therefore, conversion of the playground into Rythu Bazar without notice to the petitioner society is illegal and arbitrary.

Learned standing counsel for Nandyal Municipality and the learned Assistant Government Pleader submit that when once a layout is approved under Town Planning Act, the roads, the parks, the lands earmarked for common use vest in the

Municipality. When once they become the property of the Municipality, there is no prohibition for using the land for other purpose though it is earmarked for one purpose, especially when the Government itself permitted such use.

Town Planning Act aims at planned development of towns so as to secure the inhabitants of the towns, sanitary conditions amenities and convenience. Chapter II of the Act deals with Town Planning Scheme and Chapter III contains provisions providing for the procedure for approval of town planning scheme. Section 9 of the Act requires the municipal council to pass a resolution to prepare a scheme within the municipal area and Section 11 requires publication of such draft scheme within twelve months from the date of the resolution. Section 13 stipulates that every draft scheme shall contain the plan showing the lines of existing and proposed streets, the ownership of all lands and buildings in the area to which the scheme relates, the area of all such lands whether public or private, the description of the details of the scheme and other particulars as may be prescribed by the State Government. The draft scheme so prepared as per the resolution of the municipal council has to be sanctioned by the Government which has to necessarily call for objections before according sanction. When once the scheme is published under sub-sections (5) and (6) of Section 14 of the Act, under Section 19 it shall be the duty of the responsible authority as defined under Section 2(8) of the Act to enforce the scheme if necessary by removing or pulling down any building which contravenes the scheme and execute any work if there is a delay on the part of the owner to do so. Section 18-B of the Act enables classification of land or building under industrial, commercial, residential, agricultural or conservation and recreational or miscellaneous category. When once the scheme is approved/sanctioned by the Government, the same cannot be varied or altered except in accordance with the procedure provided under Section 15 of the Act. The same reads as under.

> **15. Requisition by the Committee for records:** (1) The Committee may in connection with any matter with which it is empowered to deal at any time require the executive authority-
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> (a) to produce any record, correspondence, plan or other document which is in his possession or under his control as executive authority; or
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> (b) to furnish any return, plan, estimate, statement, account or statistics.
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> (2) The executive authority shall comply with every such requisition unless in his opinion immediate compliance therewith would be prejudicial to the interests of the municipal administration or of the public, in which case he shall make a declaration in writing to that effect and shall, if required by the Committee, refer the question to the Municipal Council whose decision shall be final.

The State Government is alone competent to vary or revoke the scheme sanctioned under Section 14 of the Act, in the exercise of such power by the State Government, it shall be incumbent to invite objections or suggestions by publishing

the draft of the variation. The municipal council or a person affected by such variation can make objections or suggestions, which shall have to be considered by the Government before issuing notification under Section 15(2) of the Act.

In this case, there is no denial that the master plan for Nandyal Town was approved by the Government in G.O.Ms.No.63, dated 30.01.1990, showing the land in question as a playground (i.e., recreational). The same continued to be so till 1999 when Rythu Bazar was established even without there being a notification under Section 15(2) of the Act. This is *ex facie* illegal. Though the respondents took a plea that there was no such necessity to call for objections, this Court is not able to countenance the submission. Reading Sections 14 and 15 of the Act together, it must be held that the master plan containing town planning scheme, as sanctioned and notified by the Government in accordance with Section 14, cannot be varied or altered unless such variation is sanctioned by the State Government and done by way of notification. Admittedly, no such notification was published in the Official Gazette as required under Section 15(2) and therefore, the conversion of the playground by the respondents as Rythu Bazar is illegal. It is no doubt true that the Ramakrishna Vidyalaya, which is run by the petitioner society, does not form part of Srinivasa Colony, which has come up in the layout T.P.No.18/77. It is also not in dispute that the petitioner's request made to the municipal council for lease of the playground in their favour did not materialize. Both these factors do not in any manner valid the action of the respondents in converting playground as a Rythu Bazar without valid notification under Section 15(2) of the Act.

The submission of the learned counsel for the respondents that the roads, common areas and playgrounds in the layout T.P.No.18/77 having been vested in Nandyal Municipality can be used for other purpose is misconceived. Section 184 of the Municipalities Act, 1965, (the Municipalities Act, for brevity) mandates that the owner of any agricultural land who intends to utilize or sell such land for building purposes shall pay conversion fees to the Municipality, and before utilizing the land for construction of buildings, make a layout and form street or road giving access to sites and connecting them with an existing public or private street. Under Section 184(2)(b) of the Municipalities Act every person submitting layout shall set apart adequate area of land for a playground, a park, an educational institution and for other purposes. Section 185 of the Municipalities Act requires every person intending to make layout and form new private street or road shall obtain sanction of the layout from the municipal council. In exercise of their powers conferred under Section 326(2)(s) read with Section 185 of the Municipalities Act, Government of A.P., promulgated A.P.Municipalities (Layout) Rules, 1970 (Layout Rules, for brevity). As per Rule 5(ii) of the Layout Rules, the layout plan shall be drawn to a scale of not less than 1:500 and must show set apart for the purpose mentioned in Section 184(2)(b) of the Municipalities Act (referred to hereinabove). Sub-rules (1)(4) and (5) of Rule 10 of Layout Rules are relevant and read as under.

> 10. (1) The area of land required to be set apart under clause (b) of sub-section (2) of Section 184 shall not be less than 5% of the gross area covered by the layout with not more than 8 plots per gross Hectare over and above this for the increase of every two plots per gross hectare, the open

spaces to be provided shall increase by one more per cent. Such open space shall, however, be limited to 10% a maximum, irrespective of the size of plots when minimum, extent and width safety as per sub-rule (1) of Rule 9.

(2) and (3) omitted in this Judgment.

(4) The Municipality shall not use the land so transferred for any purpose other than that for which it is so transferred or shall not utilize the amount for any other purpose other than the acquisition of the land for the purpose for which it is so transferred.

(5) The land to be set apart under clause (b) of sub-section (2) or Section 184 as required by sub-rules (1) and (3) in respect of the size of the layout not exceeding one hectare may be provided in the areas set apart for public purpose in the sanctioned General Town Planning Scheme (Master Plan) in the vicinity of the layout areas as may be decided by the Council with the approval of the Director of Town and Country Planning so as to secure larger extents of land for public purposes.

Rule 14 of the Layout Rules may also be extracted.

14. On fulfillment of the conditions laid down in Section 148 to the entire satisfaction of the Secretary, the owner of the layout shall within a reasonable period which shall not exceed one year from the date of communication of the approval of the layout under sub-section (3) of Section 185, of transfer the private streets or roads along with the lands set apart for parks, playgrounds, educational institutions or for any other public purposes under clause (b) of sub-section (2) of Section 184 or under sub-rule (1) of Rule 10 to the Municipality.

A reading of the above Rules would show that the owner of the layout has to transfer the private streets or roads along with the parks, playground, land for educational institutions or for other public purposes under Section 184(2)(b) of the Municipalities Act or Rule 10(1) of the Layout Rules to the Municipality. When once they are transferred under sub-rule (4) of Rule 10, the Municipality shall not use the land so transferred for any purpose other than the purpose for which it is so transferred. It only means if the owner of the layout has transferred the land earmarked as a park, the same cannot be used for any other purpose. Similarly, if the land is shown in the layout as playground, it is not competent to municipality to use the land earmarked as playground for any other purpose. Thus, it is clear that the playground in layout T.P.No.18/77 cannot be used as a place for Rythu Bazar. This view is supported by case law as well, to which reference is made below.

In **Virender Gaur v State of Haryana,** Government of Haryana permitted the Municipality in Haryana to lease out open space to Punjab Samaj Sabha (PSS) for construction of Dharmashala. PSS was required to pay the lease amount to the Municipality. The land, which was ordered to be demised to PSS, was meant as a public amenity to the residents of the locality to maintain ecology, sanitation, recreation, play ground and ventilation purposes. Though the land stood vested in the Municipality, the Government ordered the grant of lease for purpose of

construction of Dharmashala. Residents of the locality approached the Punjab and Haryana High Court challenging the order of the Government unsuccessfully. On High Court declining to interfere, the respondents carried the matter to the Supreme Court. For the lessee, it was contended that under the Municipalities Act, it was permissible for the Municipality to lease out the land for charitable purpose, and, therefore, leasing out of open space in the lay out is within the powers of the Municipality. The Supreme Court after referring to the Stockholm Declaration on Human Environment, 1972 and Article 48-A of Constitution of India, while quashing the orders issued by the Government and ordered to pull down all the constructions made by Punjab Samaj Sabha.

The Supreme Court while referring to **Bangalore Medical Trust v B.S.Muddappa** and made the following observation:

> The land having been taken from the citizens for a public purpose, the Municipality is required to use the land for the protection or preservation of hygienic conditions of the local residents in particular and the people in general and not for any other purpose. Equally, acceptance of the argument of Shri V.C.Mahajan encourages pre-emptive action and conduct, deliberately chartered out to frustrate the proceedings and to make the result fait accompli. We are unable to accept the argument of fait accompli on the touchstone of prospective operation of our order.

In **M.I. Builders Private Limited v Radhey Shyam Sahu,** Lucknow Nagar Mahapalika constructed underground shopping complex in a historic park known as Jhandewala Park situated at Aminabad Market, Lucknow. The same was challenged before the Lucknow Bench of Allahabad High Court, which held that the decision of Lucknow Municipality is illegal, arbitrary and unconstitutional. As M.I. Builders Pvt. Limited, which was entrusted with the work of construction of shopping complex had completed part of construction, it sought Special Leave and preferred Civil Appeal before the Supreme Court. The Supreme Court affirmed the view of Lucknow Bench of Allahabad High Court and also directed to dismantle and demolish all the constructions made in the public park and also restore the place as a park to its original shape. The apex Court observed as under.

> …As said earlier, High Court rightly exercised its power of judicial review in the present case. It has examined the manner in which the decision was made by the Mahapalika. Second principle laid in Tata Cellular's case (1994) 6 SCC 631: (1994 AIR SCW 3344: AIR 1996 SC 11) applies in all respects. High Court held that **the maintenance of the park because of its historical importance and environmental necessity was in itself a public purpose and, therefore, the construction of an underground market in the garb of decongesting the area was wholly contrary and prejudicial to the public purpose. By allowing the construction Mahapalika had deprived its residents as also others of the quality of life to which they were entitled to under the Constitution and the Act.** The agreement smacks of arbitrariness, unfairness and favouritism. The agreement was opposed to public policy. It was not in public interest. Whole process of law was

> subverted to benefit the builder. We agree with the findings and conclusions of the High Court.
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> (emphasis supplied)

I n **Co-operative Housing Society, Saleemnagar Limited v MCH**, a Division Bench of this Court, to which I was a Member, considered the question whether construction of a school building in the area earmarked for park at the behest of the Hyderabad Municipal Corporation is justified. The building permission granted by the Municipal Corporation of Hyderabad to a minority educational institution for construction of building was subject matter of the writ petition before the Division Bench. This Court referred to **Bangalore Medical Trust** (supra), **M.I. Builders Pvt. Ltd.** (supra) and also a judgment delivered by me in **NGOs Colony Development Committee v District Collector, Krishna, Machilipatnam** and categorically laid down as under.

> The answer to the said question must be rendered in the negative. Right to clean environment is a part of the fundamental right under Article 21 of the Constitution of India. The land earmarked for park cannot be converted or changed into land for other purposes. If the Corporation had no jurisdiction to grant permission for construction of the building in a park, no amount of consent can validate the invalidity. The order of the Corporation was a nullity. The Corporation being a statutory authority must exercise its jurisdiction within the four corners of the statute. Any action taken beyond the power by Corporation shall be ultra vires.

Therefore, it is a settled law of the land, nay, it is axiomatic that when once a lay out is approved showing an open space meant for a park or for a recreational purpose or playground, under no circumstance, a public authority, be it the Government, the District Collector or the Municipal body, can utilize the land for any other purpose. This is especially so, when the land is earmarked as a green space/park meant for the use of the people of the locality. I may hasten to add that even if the Municipality has permitted such constructions, all such permissions are contrary to law laid down by the Supreme Court. Rule of Law requires that they should be ignored, as they are void.

The area earmarked as playground in the layout can be used by the residents of the locality as well as Nandyal town not only for the purpose of childrens games and sports but can be used for different purposes like walking track, for growing tree clusters or for common meeting place. When once the layout was approved considering the playground is part of the common area, the same cannot be converted into a business/commercial area by allowing a Rythu Bazar. Such conversion is impermissible in law.

In the result, for the above reasons, the action of the respondents in converting the playground in layout bearing T.P.No.18/77 of Srinivasa Cooperative

Housing Society Colony as Rythu Bazar is unsustainable in law. There shall be a declaration accordingly. The writ petition is accordingly allowed with costs.

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(V.V.S.RAO,J)

21.03.2006.

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Note: 1. LR copy be marked.

2. Dispatch order copy by 24.03.2006

By order

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